

CHESTNUT LAW OFFICES, P.A.

Attorneys at Law
121 Tijeras Avenue NE, Suite 2001
Albuquerque, New Mexico 87102

Peter C. Chestnut
Telephone:
Ann Berkley Rodgers
Joe M. Tenorio
Aaron M. Sims

Mailing:
Post Office Box 27190
Albuquerque, New Mexico 87125-7190

(505) 842-5864
Facsimile:
(505) 843-9249

PRESENTATION TO LAND GRANTS COMMITTEE OF NEW MEXICO LEGISLATURE

NOVEMBER 13, 2014

On

N.M. Supreme Court Ruling in

RAYELLEN RESOURCES, INC. v. NEW MEXICO CULTURAL PROPERTIES REVIEW COMMITTEE

By Ann Berkley Rodgers

On February 6, 2014, the New Mexico Supreme Court, in a unanimous decision affirmed the authority of the New Mexico Cultural Properties Review Committee to designate the Mount Taylor Traditional Cultural Property. This is important for all of the traditional communities in New Mexico, not just Indian Tribes.

The role that prominent natural features play in the lives of the people who have made New Mexico their home for centuries is a hallmark of the culture in the state. What other cultures may imbue in buildings and structures, such as the Taj Mahal, the Statue of Liberty, or even Mount Vernon, the people of New Mexico have long found in the mountains and mesas that have framed our lives and our forbearers for centuries. Now there is no question as to whether these features can be given the respect under law that the people give to them as a matter of course.

The Indian Tribes that nominated Mount Taylor for listing on the state register of Cultural Properties explicitly excluded all private property from inclusion in the TCP. The New Mexico Supreme Court decision confirmed that the common lands of certain land grants, despite legislative language to the contrary, should be considered private property and therefore excluded from the listing.

This was an issue of statutory construction, and as noted by the CPRC in its brief in the case, an issue that is best left to a Court, not an administrative agency such as the Committee, to resolve.

The Court clearly heard the legislature's concern on this issue, citing to the codified House Bill 81 of the 2011 Legislature, enacted while the case was on appeal. HB 81 amended NMSA 49-11-1.1 to state:

"C. The designation of land grants-mercedes as political subdivisions of the state shall not alter the property rights of the heirs in the common lands. The common lands owned or controlled by a land grant-merced shall not be considered to be, designated or treated as state land."

While this does not mean that Land Grant Boards of Trustees who have the governmental authority of a political subdivision do not have to comply with the Cultural Properties Act as other governmental entities, do, it does not allow inclusion of the common lands of a land grant where a listing explicitly excludes private property unless the members of the land grant agree.

Thankfully, the legislature also gave the Land Grants and Indian Tribes a way to move forward when enacting H.B. 81. The legislation explicitly provides that the Board of Trustees have the authority to

"enter into memoranda of understanding, contracts and other agreements with a government of a federally recognized Indian nation, tribe or pueblo, including but not limited to agreements concerning the protection and maintenance of cultural resources"

This is critical as it provides a means for the communities to come together to protect what is important, including the rights of both Tribes and Community Land Grants under the Treaty of Guadalupe-Hidalgo.

Acoma has not needed to press its neighboring community land grant for a written memorandum of understanding, primarily because these two neighbors know how to pick up the telephone and talk to each other. But, having a tool available to both communities to work together is a step forward, not backward.